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"High Technology and Software Trade"

Statement of

Brian McEachron
Senior Corporate Attorney
Microsoft Corporation

on behalf of
Microsoft Corporatiod and
the Business Software Alliance**

before the
Trade Deficit Review Commission
Palo Alto, California

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Introduction

Over the past **25** years, computer software has fundamentally reshaped every facet of our lives and helped secure this country's economic leadership. The U.S. software industry employs hundreds of thousands of U.S. workers and contributes billions of dollars annually in tax revenues to federal and state governments. Of equal significance is the industry's contribution to the U.S. balance of payments. The U.S. software industry supplies an estimated 70 percent of the world market for legitimate packaged software. As a result. while the U.S. trade deficit reaches new record highs, it is projected that the U.S. software industry will generate a trade surplus of more than $20 billion by the year 2000. The software industry's growing trade surplus means more jobs and more tax revenues for the U.S. economy.

The success of the U.S. software industry is **due** in large part to this country's historical commitment to strong intellectual property protection. It is no coincidence that the United States – the world's leading

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* Microsoft has sought to empower people through great software any time, any place and on any device. In pursuit of this goal, Microsoft has grown, changed, adapted and reinvented itself continuously – today we employ more than 3 1,000 people worldwide. approximately 16,000 of whom are located at our headquarters in Redmond, Washington and 5,000 elsewhere in the U.S. Microsoft's products range from operating systems, to applications software **such** as word processing and spreadsheet programs, to software development tools and programming language products that help people develop and write creative software, and to an Internet on-line service, The Microsoft Network ("MSN").

** Since 1988, the Business Software Alliance (BSA) has been the voice of the world's leading software developers before governments and with consumers in the international marketplace. Its members represent the fastest growing industry in the world. BSA educates computer users on software copyright issues; advocates public policy that fosters innovation and expands trade opportunities; and fights software piracy. BSA worldwide members include Adobe, Attachmate, AutoDesk, Bentley Systems, Corel Corporation, Lotus Development, Macromedia, Microsoft Corporation, Network Associates, Novell, Symantec and Visio. Additional members of BSA's Policy Council include Apple Computer, Compaq, Intel, Intuit and Sybase. BSA websites: www.bsa.org; www.nopiracy.com.

industry is expected to employ more than 1.3 million workers in the United States. No other high tech industry is providing employment opportunities at such a rapidly increasing rate.

The economic contribution of the U.S. software industry can also be measured in terms of federal and state tax dollars benefiting a host of national and community programs. In 1998 alone. the software industry contributed over $28 billion in tax revenues to federal and state governments. This tas contribution is expected to reach $50 billion by the year 2008.

Balance of Trade

The U.S. software industry's contribution to the U.S. balance of trade further illustrates the industry's increasing importance to the U.S. economy. U.S. software publishers earn more than half of their total revenue from overseas sales of software. BSA estimates that the U.S. software industry supplies 70 percent of the world's demand for legitimate packaged software.

According to a study conducted by Nathan Associates, a Virginia-based economic consulting firm. ***the U.S. software industry is projected to contribute more than a $20 billion surplus to the total U.S. trade balance by the year 2000.*** The same study also determined that in 1997 the U.S. software industry contributed a $13.0 billion surplus to the U.S. trade balance (see figure 1). This 1997 surplus consisted of a $7.15 billion surplus on trade in goods and services and a $5.87 billion surplus on trade in income.

The U.S. software industry's trade surplus indicates that the industry's economic activity in the United States far exceeds its economic activity abroad. resulting in more jobs, higher wages, and a better standard of living for U.S. workers. In contrast, the U.S. economy as a whole (excluding U.S. military and government transactions) reported a trade *deficit* of $36.4 billion in 1997. ***Without the surplus of the U.S. software industry, the U.S. economy's trade deficit would have been nearly $50 billion in 1997--some*** 36 ***percent higher than the actual amount.***

According to the Nathan study, the software industry's 1997 trade surplus reflects an historic trend of increasing export activity (see figure 2). Between 1990 and 1997, the U.S. software industry's trade surplus grew at an average rate of 17.9 percent per year, while its gross receipts at U.S. establishments grew at an average rate of 14.7 percent per year. These statistics signify that consecutive increases in annual software sales have generated even greater annual contributions to the U.S. trade balance. In other words. as our industry's sales have grown, an increasing proportion of those sales have been made to foreign buyers.

Unfortunately, the trend for the U.S. trade deficit as a whole is not so favorable. In just eight years from 1990 to 1997. the U.S. trade deficit more than doubled from $17.8 billion to the $36.4 billion level. And recent reports indicate that the U.S. deficit will reach another record high this year. This trend makes the software industry's trade surplus an increasingly vital factor in stabilizing our balance of payments.

Economic Impact of Piracy on the Software Industry

Despite its significant contribution to the U.S. economy, the software industry has yet to realize its full economic potential because of global piracy. Although most countries have taken some steps to curb piracy, many still lack the legal protections, remedies, resources, and political will needed to achieve significant reductions in software theft. The result is an average global piracy rate of 38 percent, and a U.S. rate of 25 percent. In terms of lost revenues, software theft robs the U.S. software industry of several billion dollars each year ($11.3 billion in 1998 alone).

piracy continues to reduce exports of legitimate software throughout the world and erects a significant barrier to trade in developing regions, such as Asia. Eastern Europe and the Middle East. In order to bring about a fundamental reduction in worldwide piracy rates, BSA and Microsoft urge the U.S. government to undertake the following initiatives:

- Ensure that developing countries implement WTO TRIPs by the January 1, 2000 deadline and more generally that all WTO member countries provide effective protection of intellectual property rights as required by TRIPs;

- Strongly oppose any efforts by member countries to weaken the requirements of WTO TRIPs during the Millennium Round of negotiations now taking place in Seattle;

- Urge all nations to adopt government legalization policies similar to the U.S. Executive Order on Computer Software Piracy; and

- Encourage multi-lateral development banks and other international lending organizations to prohibit the use or acquisition of pirated software in projects financed by them.

implementation of WTO TRIPs

In order to remedy defects in foreign enforcement regimes, the U.S. government should continue to push developing countries to implement WTO TRIPs by the January 1, 2000 deadline. While developed countries were required to implement their TRIPs commitments no later than January 1, 1996. the substantial majority of WTO members – developing countries and countries in market transition comprising some 80 percent of WTO's membership -- were given a five-year transition period, until January, 1. 2000 to do so.

The TRIPs Agreement is the first major international treaty to recognize that intellectual property rights are meaningful only if accompanied by adequate enforcement procedures and remedies. The. TRIPs agreement requires all member countries to provide a fair and effective arsenal of enforcement tools and remedies. combined with the resources and commitment needed to combat infringement. The availability and use of these enforcement tools is fundamental to effective efforts to educate software consumers -- whether corporations, governments or individuals -- on the impact of copyright and related laws on software use. Lax enforcement and ineffective remedies (e.g., low fines and damages, slow and complex judicial procedures) are the main reasons foreign piracy rates remain so high. Even in developing countries. pirates, including reputable businesses, typically know that software theft is a copyright violation, but continue to break the law because the risk of punishment is negligible. Within this environment. implementation of WTO TRIPs is a critical step towards reducing the rate of software theft in developing countries.

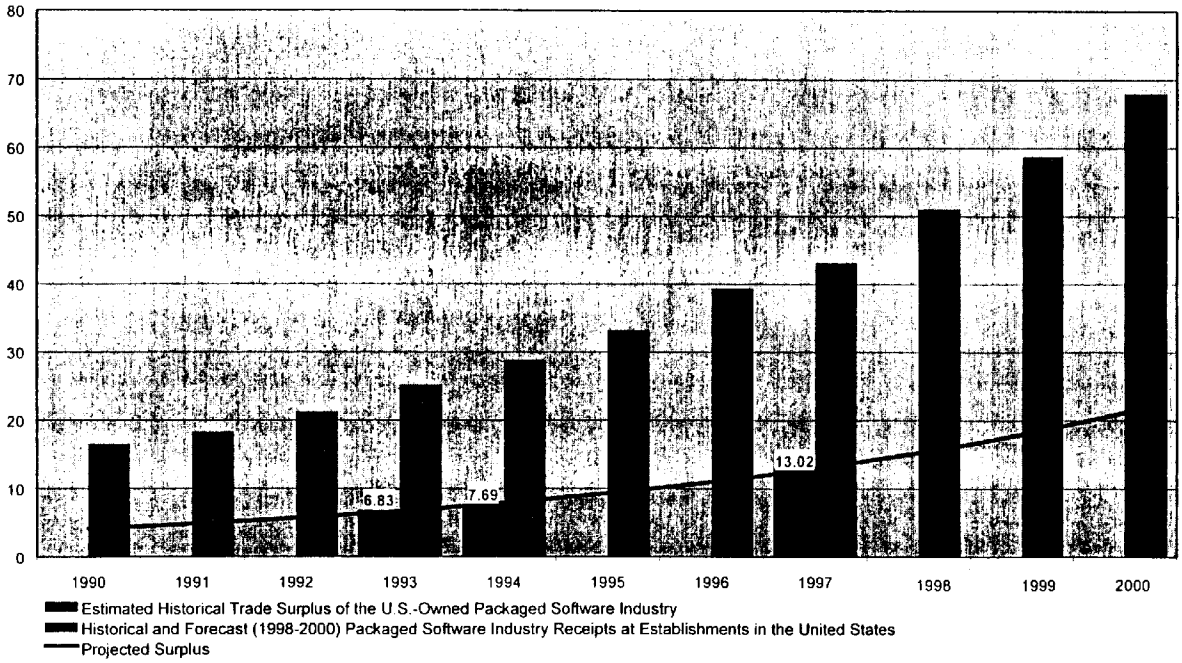
Some developing countries have argued that the impending deadline for TRIPs implementation should be officially extended during the Millennium Round of negotiations now taking place at the WTO Trade Ministerial in Seattle. The U.S. government should resist these efforts to give non-compliant countries yet another excuse to delay urgently needed reforms. Moreover, the government should strongly oppose any other efforts to weaken the requirements of the TRIPs agreement.

Government Legalization Policy

Government agencies and public institutions are typically among the largest users of computer software. As such, government leaders have an obligation to establish legalization policies and procedures that both prevent software piracy within the public sector and set an example for the private sector to follow. At a

Each of these measures – implementation of the WTO TRIPs Agreement; government legalization; and development bank lending reform – would help eliminate trade barriers created by weak intellectual property protection. The resulting reductions in global piracy would create significant new export opportunities for software publishers and lead to even greater gains for the U.S. economy.

Figure 2. U.S.-Owned Packaged Software Industry's Annual Trade Surplus, 1990-2000 (current $billion)



Source: Nathan Associates Inc.